

MONTANA LEGISLATIVE HISTORY

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Chapter 359 19 91

Bill H _____ S 156 Original bill & history ____C

H. Committee on State Admin.

S. Committee on State Admin.

Hearing Date(s) Mar 08 ✓C

Hearing Date(s) Jan 28 ✓C

Mar 13 ✓C

Jan 25 ✓C

____C

____C

____C

____C

Date Out _____C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

2/19 SIGNED BY GOVERNOR
CHAPTER NUMBER 39

EFFECTIVE DATE: 10/01/91

SB 156 INTRODUCED BY DOHERTY, ET AL.

CLARIFY & GENERALLY REVISE INITIATIVE
PETITION AND REFERENDUM LAWS
BY REQUEST OF SECRETARY OF STATE

1/21	INTRODUCED		
1/22	REFERRED TO LOCAL GOVERNMENT		
1/22	FIRST READING		
1/23	REFERRED TO STATE ADMINISTRATION		
1/28	HEARING		
1/29	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED AS AMENDED	50	0
2/02	3RD READING PASSED	46	0
	TRANSMITTED TO HOUSE		
2/04	FIRST READING		
2/04	REFERRED TO STATE ADMINISTRATION		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	86	3
3/18	3RD READING CONCURRED	95	3
	RETURNED TO SENATE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS CONCURRED	47	0
3/25	3RD READING AMENDMENTS CONCURRED	47	0
3/28	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 359		

EFFECTIVE DATE: 10/01/91

SB 157 INTRODUCED BY VAUGHN, ET AL.

GENERALLY REVISE ELECTION LAWS
BY REQUEST OF SECRETARY OF STATE

1/21	INTRODUCED		
1/22	REFERRED TO STATE ADMINISTRATION		
1/22	FIRST READING		
1/28	HEARING		
1/29	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED AS AMENDED	45	5
2/02	3RD READING PASSED	38	9
	TRANSMITTED TO HOUSE		
2/04	FIRST READING		
2/04	REFERRED TO STATE ADMINISTRATION		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	85	3
3/18	3RD READING CONCURRED	92	6
	RETURNED TO SENATE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS CONCURRED	47	0
3/25	3RD READING AMENDMENTS CONCURRED	47	1
4/02	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/03	TRANSMITTED TO GOVERNOR		
4/09	RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS		
4/17	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	26	22
	TRANSMITTED TO HOUSE		
4/18	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	63	35

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairperson Eleanor Vaughn, on January 28, 1991, at 10 A.M. in room 331.

ROLL CALL

Members Present:

Eleanor Vaughn, Chairman (D)
Bob Pipinich, Vice Chairman (D)
John Jr. Anderson (R)
Chet Blaylock (D)
James Burnett (R)
Harry Fritz (D)
Bob Hockett (D)
Jack Rea (D)

Members Excused: Senators Bill Farrell and Bernie Swift

Staff Present: David Niss (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 156

Presentation and Opening Statement by Sponsor:

Senator Steven Doherty, Senate District 20, westside of Great Falls, said Senate Bill 156 is an act to generally revise and clarify the state and local referendum and initiative petition processes. Section 1 changes municipal process and makes it track the county process. Section 2 outlines procedure to exercise right of initiative or referendum on how you change the government form to the next. If an approved petition containing sufficient signatures is filed prior to the effective date, they can have the referendum. Section 3 provides that the local county attorneys to review the petitions for legality. This is the same procedures that state petitions follow. Section 4 deals with problems of submission of initiatives. Section 5 deals with deadlines for submission of petition sheets or withdrawal of signatures. They would like more time, 4 weeks is suggested. Petitioners would have to get their petitions in earlier. Section 6 says that the Attorney General may endeavor to seek out parties on both sides for preparation of statements.

The Attorney General shall prepare a fiscal statement or fiscal note for the proposed ballot issue. Section 7 says the Attorney General shall appoint a committee less than 7 months before the election and no later than 30 days after the measure is approved by the Secretary of State. The committees that write the pro and con for the voter information pamphlet must be appointed.

Proponents' Testimony:

Nancy Harte, Bureau Chief of the Elections and Legislative Bureau in the Secretary of State's office is testifying today in support of Senate Bill 156. These changes will solve problems that have the potential of becoming embroiled in litigation. For people fighting for or against a cause through the initiative process, the clarity and consistency in the application of the election law becomes important. (She gave a written copy of her testimony. Exhibit 5) Ms. Harte gave a proposed amendment. (Exhibit 1)

Betty Lund, Ravalli County Clerk & Recorder and a member of the Secretary of State's Advisory Council, said she supports this bill. One of the big problems is the checking of the petitions and the short time they have to finish that job. On page 9, line 25, they've changed 2 weeks to 4 weeks, and are willing to negotiate that time if the voters think it is going to harm them grievously. She supports this bill.

Mike Steven, representing the Clerk and Records Association, said they support this bill. Many of the things that it entertains will make the whole procedure more smooth and efficient and give those who work with the system the time they need to do a good job. Yet it remains very fair to petitioners.

Beth Baker, representing the Department of Justice, talked about sections 4 and 6 which have to do with the Attorney General's office. Section 4 page 8, line 25 states the Attorney General may not reject the petition solely because the text contains material not submitted to the legislative council, unless the material not submitted to the legislative council is a substantive change not suggested by the legislative council. Then on page 9, line 16 (5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures. On page 10, line 25, changes shall to may and 11 they deleted a committee and instead have drawn up a statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure. On page 12, line 19 there is a change from 10 days to 21 days after receipt of the petition by the Attorney General he shall forward his comments to the secretary of state. Their objective is to make the petitions solid and not subject to challenge.

C. B. Pearson, Executive Director of Common Cause, is a government advocacy organization who uses the initiative process. They basically support the bill, but have 1 objection. That is the reduction in the amount of time people would be able to carry petitions for signatures. He understands that they're moving 2 days forward.

Mark Mackin has been an advocate of the initiative process for 10 years. He thinks most of the changes are very good, but there are two points he wonders about. The loss of 2 weeks is an important issue to those gathering signatures, because the time immediately before the election is the best time for collecting signatures. He said there should be an incentive to turn in signatures early and get an early count back from county clerks and recorders. The signature collectors would know how many more they needed and the clerks could be partially done early and perhaps have less signatures to count later. Mr. Mackin suggested using a statistical method of qualifying signatures. If a group turns in a very large group of signatures at the last minute for tactical reasons, the burden on the Clerk was a extreme to count them. Presently, all signatures must be verified as to whether or not that person is a registered voter. He thinks a statistical method would be fairly accurate for the process. He suggested that on page 9, line 25 that the number be 3 weeks.

Mr. Mackin would like in 13-27-312 Section (6) on page 12, line 12 to add in after "similar" the words ", but not limited to,". Presently it looks as though the Attorney General is required to use the for and against statement in a very rigid manner. This clarifies that the Attorney General's office doesn't have to use double negatives, such as, "for repealing the seat belt law".

Opponents' Testimony:

Jerome Anderson, an attorney from Helena representing the Tobacco Institute, said certain parts of this legislation are fine and others should be changed. First, it's important to remember this is legislation and is part of the code passed by the people. The present initiative law follows the path that when people who want legislation submit a proposal to the Legislative Council. The Council reviews it and either suggest changes or saying it is in order. Ultimately it goes to the Attorney General for a statement of implication and gets to the ballot process. He believes the steps as presently outlined are proper safeguards that should remain in the statute. The people who prepare petitions need to follow the form that is readily available to them from the Secretary of State's office.

Mr. Anderson said he has trouble with the new language on the bottom of page 8 and top of page 9 that says, "The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative council, unless the material not submitted to the

SENATE STATE ADMINISTRATION COMMITTEE

January 28, 1991

Page 4 of 8

legislative council is a substantive change not suggested by the legislative council." If you are to avoid litigation, someone has to rely on a determination by somebody. The legislative council should go over these things and make suggestions.

Mr. Anderson said on page 9, line 16 through 18 is all new language. Who makes the determination of what is a technical defect in form? How do we know? Leave this out and keep the law the way it is.

Mr. Anderson said on page 10, line 25 says shall and changes that to may. He likes the term shall. On the top of page 11 concerning the appointment of a 5 member committee, he thinks it should be left in for future attorney generals to use if they so desire. That procedure should be available to them. The petition process is an enactment of state law, which is done by the people rather than the legislature, and the present procedures give a sense and consistency to the legislation. The Clerks need time to qualify those signatures and the time they're given is too short. The petitioners turn in the lists at the last moment to prevent withdrawal of signatures.

Questions From Committee Members:

Senator Blaylock asked how would a statistical method of verifying signatures work? Mark Mackin responded that if a clerk has 5,000 signatures, she would sample 100 of them and apply that percentage to the entire 5,000.

Senator Pipinich asked Jerome Anderson what is his opinion of the statistical method of verifying signatures? Mr. Anderson responded this would not serve the general public. It would make the process more rapid, but it would not be valid or accurate. Montana validation process is more loose than many other states.

Senator Blaylock asked Nancy Harte about page 8, line 24 and 9, lines 1 through 4. Who is going to determine the materiality of whether it is substantive or not? The legislative council reviews the proposals first. There advise is just advise and they don't specify what language ought to be. The Secretary of State or the Attorney General could make that determination.

Senator Blaylock asked C. B. Pearson about the bundling of signatures and submitting them at the last moment. That prevents the opposition from getting people to withdraw signatures. Plus the burden on the clerks is phenomenal. The process needs 4 weeks to really look at the initiative and explain to the people of the state what that initiative would do. Mr. Pearson responded that moving the time 2 weeks forward in this legislation will solve that problem. The initiative campaigners need the time to collect signatures and they need good weather.

Senator Blaylock stated people should have a right to reconsider

their signature of a far-reaching initiative. C. B. Pearson stated this bill doesn't address that issue.

Senator Vaughn called attention to Jerome Anderson request that we leave in lines 2 through 11 on page 10. Beth Baker responded that the attorney general should always get advise from both sides of an issue. It is difficult to find people to serve on these committees. Also, if it is repeat legislation, it won't require seeking out additional advise. Time is a problem with appointing a committee also. Her office wouldn't object to leaving the word "shall" in on page 10, line 25.

Senator Blaylock asked Nancy Harte if there is a way in this legislation to allow people to withdraw their signatures? She said under current law people can withdraw their signature up to the time of submission of petition sheets, which would be the time they would be submitted to the secretary of states office, which is 2 weeks after they are submitted to the county. If you accept the 4 weeks, there would be a 4 week window. The deadlines would be the same. Jerome Anderson said it is important that both sides have the right to oppose or support an initiative.

Senator Fritz asked if this legislation makes it easier, more difficult or about the same to file a petition. Mr. Doherty answered it makes it easier because this legislation clarifies and defines the problem areas. Jerome Anderson said all the rights of all the people ought to be preserved. Beth Baker said this bill is designed to make the initiatives less subject to legal challenge for a minor technicality, which isn't spelled out in the process well enough. Jerome Anderson explained that Montana has a fairly loose framework around the initiative process and other states are more stringent.

Chairperson Vaughn asked Betty Lund if this bill is viable for the clerk and recorders? Betty Lund said these clarifications help from having the petitions challenged in court, because that delays the printing of ballots. The 4 weeks would be wonderful. Ballots must be in-shop ready 45 days before election so people can vote. Perhaps 3 weeks would be a good compromise. The Department of Justice has good advice about these problems too. It's difficult to find people on both sides of an issue to serve on a committee.

Closing by Sponsor:

Senator Doherty said this bill removes technicalities that prevent initiatives from being taken to the people of Montana. Bundling and dumping on the last day is a problem. The legislative council are advisors and the Attorney General and the Secretary of State are the final word in this balloting process. Thank you for the hearing.

Chairperson Vaughn handed the gavel to Vice Chairman Pipinich so that she could present Senate Bill 157.

HEARING ON SENATE BILL 157

Presentation and Opening Statement by Sponsor:

Senator Vaughn, Senate District #1 representing most of Lincoln County, said that Senate Bill 157 is presented at the request of the Secretary of State's office. For the past 2 years the Secretary of State's staff has kept track of inconsistencies and problems they and county election administrators have found in the state election laws. An election advisory council was formed in 1989 and it's task was to review proposed legislative changes. The council also proposed additional changes. This council presented these ideas on legislation as resolutions at the 1990 clerk and recorders annual convention, which adopted most of these resolutions. With the assistance of most of the state's election administrators, the Secretary of States office prepared this general revision of these election laws.

Proponents' Testimony:

Nancy Harte, Bureau Chief of the Election Bureau, Secretary of State's office, read her testimony in support of Senate Bill 157. (exhibit 4) She read through the bill with the senators. She explained at length Section 9 which deals with independent candidates filing for election. This is based on California law that has been proven constitutional, which requires that a candidate not be affiliated with a political party for 1 year. Section 10 is eliminated because it has been declared unconstitutional on the federal level. Section 11 eliminates the pollbook, simplifies that part of the voting process, and eliminates 1 election judge at the polls. Section 12 provides for faxing a request for absentee ballot. Section 13 provides that a primary election can be called off in certain circumstances. Section 14 deals with write-in candidates and they must pay the required filing fee if elected. Section 15 deals with the problem where there is a tie vote and there must be a recount and inspection of ballots, this allows county commissioners to find the lost ballots without going to court. Section 17 defines and simplifies mailed ballots.

Betty Lund supports 99% of the changes in this bill. She offered an amendment. (Exhibit 3) She left a copy of her testimony (Exhibit 6)

C. B. Pearson, Executive Director of Common Cause, supports this bill.

Opponents' Testimony:

None

ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE Jan 28, 1991

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ELEANOR VAUGHN	X		
SENATOR BOB PIPINICH	X		
SENATOR JOHN ANDERSON	X		
SENATOR CHET BLAYLOCK	X		
SENATOR JAMES BURNETT	X		
SENATOR "BILL" FARRELL			excused
SENATOR HARRY FRITZ	X		
SENATOR BOB HOCKETT	X		
SENATOR JACK "DOC" REA	X		
SENATOR BERNIE SWIFT			excused

Each day attach to minutes.

DATE Jan 28, 1991

COMMITTEE ON State Administration

VISITORS' REGISTER

[illegible]

PROPOSED AMENDMENT TO SENATE BILL 156

Page 9, line 18.

Insert following signatures.

The secretary of state may provide a sample petition form including the sponsor's text, statement of purpose and statements of implication as provided in 13-27-312, MCA, which is approved and may be circulated in the form prepared by the secretary of state.

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 1-28-71

BILL NO. SB 156

Proposed amendment to SB 156

13-27-312 Section (6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar, but not limited to, ~~to~~ the following example:

FOR extending the right to vote to person 18 years of age

AGAINST extending the right to vote to persons 18 years of age.

**TESTIMONY -- SENATE STATE ADMINISTRATION COMMITTEE
ON SENATE BILL 156, JANUARY 28, 1991**

Madame Chairman and members of the committee, for the record I am Nancy Harte, Bureau Chief of the Elections and Legislative Bureau in the Secretary of State's office.

I am testifying today in support of Senate Bill 156, which was drafted at the request of Secretary of State Mike Cooney.

Montana's initiative and referendum process is a popular one, but it is not without its flaws. Senate Bill 156 cures some of these flaws in both state and local initiative and referendum statutes.

Individually, these changes seem minor, and they do not require immediate action. But collectively, making these changes will solve problems that have the potential of boiling over and becoming embroiled in litigation. For those people fighting for or against a cause through the initiative process, the clarity and consistency in the application of the initiative election law becomes extremely important.

Each one of these proposed changes come as a result of an event that took place over the last year that caused confusion and could have resulted in a court case.

The initiative process is usually undertaken by average citizens, not professionals in the development of ballot issues. The law regulating the petition process ought to be clear enough for those average citizens to complete the petition process without jumping through bureaucratic hoops or doing fancy legal maneuvering.

Senate Bill 156 will, we think, assist in that effort. I ask you to support Senate Bill 156, and I will be happy to answer any questions you might have.

Discussion:

Senator Burnett believes this bill is adding more bureaucracy and suggests that this task could be assigned to the Lieutenant Governor. He plans to oppose any increase in bureaucracy.

Senator Blaylock asked what purpose is this bill? Senator Pipinich said this would start a new agency with a Coordinator of Ethnic Affairs at its head. This is patterned after the Coordinator of Indian Affairs.

Senator Hockett said there's between 45 or 50 thousand Indians in Montana and less than 2,000 other minorities. Senator Farrell felt they could add a person in the Coordinator of Indian Affairs office more economically than starting a whole office.

Committee members discussed the different government services that are available to people who need help finding jobs, getting training, and finding homes, etc. Senator Blaylock asked if these people are being discriminated against? Senator Burnett responded that they have trouble fitting into the society.

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The VOTE was UNANIMOUS to DO NOT PASS SENATE BILL 76.

EXECUTIVE ACTION ON SENATE BILL 149

Motion:

Senator Farrell made a MOTION that SENATE BILL 149 DO NOT PASS.

Discussion:

Chairman Pipinich asked David Niss if he talked to Bob Lane of Fish, Wildlife and Parks as to whether they had worked with Mr. Tom Schneider about their differences with the legislation? After discussion he felt both sides were far apart on agreement.

Recommendation and Vote:

The VOTE was UNANIMOUS to DO NOT PASS SENATE BILL 149.

Vice Chairman Pipinich returned the gavel to Senator Vaughn to finish chairing the meeting.

EXECUTIVE ACTION ON SENATE BILL 156

Motion:

Chairperson Vaughn said that Senate Bill 156 is legislation surrounding referendums and initiatives. Nancy Harte brought in a compromise amendment on the amount of time to have the signatures verified for a legal referendum. It will still allow Clerk and Recorders 4 weeks to verify signatures. They took 1 week off the initiative collector's side and a week off the Secretary of State's side. Senator Hockett MOVED to adopt the AMENDMENTS. (Exhibit 2)

Discussion:

Senator Pipinich asked should this read Attorney General "may" or "shall"? Nancy Harte thought the A. G. wanted the "may" left in.

Amendments, Discussion, and Votes:

The VOTE on the AMENDMENTS presented in exhibit 2 was UNANIMOUS IN FAVOR OF ADOPTION.

Senator Blaylock said it is almost impossible to get both sides together and that's why they want that left discretionary. The committee feels that if necessary the Attorney General will do it.

Attorney Niss presented the amendment that had been prepared at the suggestion of the Secretary of State. (Exhibit 3) Senator Pipinich MOVED to accept the AMENDMENTS presented in exhibit 3. Senator Blaylock moved to AMEND the AMENDMENT after the word "state" on the first line to delete the word "may" and add "shall upon request".

Would the word "may" enable the Secretary of State to not give the sample petition form? Nancy Harte responded that the petitioner doesn't have to use their form, just that one is available if they so desire.

The VOTE on the motion to AMEND the AMENDMENT to say the "Secretary of State shall upon request provide..." was UNANIMOUS. The VOTE on Senator Pipinich's motion to accept the AMENDMENTS AS AMENDED page 9, line 18 as outlined in exhibit 3 was UNANIMOUS.

Recommendation and Vote:

Senator Blaylock MOVED SENATE BILL 156 DO PASS AS AMENDED. The VOTE was UNANIMOUS to pass S. B. 156 as amended.

EXECUTIVE ACTION ON SENATE BILL 157Discussion:

Chairperson Vaughn said Senate Bill 157 is legislation

ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE 1-29-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ELEANOR VAUGHN	X		
SENATOR BOB PIPINICH	X		
SENATOR JOHN ANDERSON	X		
SENATOR CHET BLAYLOCK	X		
SENATOR JAMES BURNETT	X		
SENATOR "BILL" FARRELL	X		
SENATOR HARRY FRITZ			<i>excused</i>
SENATOR BOB HOCKETT	X		
SENATOR JACK "DOC" REA	X		
SENATOR BERNIE SWIFT			<i>excused</i>

Each day attach to minutes.

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 1-29-91

BILL NO. SB 156

Amendments to SB 156

Amend page 9, Section 5, line 25

strike: 4

insert: 3

Add new section:

Section . Section 13-27-104, MCA, is amended to read:

"13-27-104. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the ~~second~~ third Friday of the fourth month prior to the election at which they are to be voted upon by the people."

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 1-29-91

BILL NO. SB156

Amendments to Senate Bill No. 156
First Reading Copy

For the Committee on State Administration

Prepared by David S. Niss
January 29, 1991

1. Page 9.

Following: line 18

Insert: "(6) The secretary of state ^{*shall upon request*} ~~may~~ provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state."

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 29, 1991

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 156 (first reading copy -- white), respectfully report that Senate Bill No. 156 be amended and as so amended do pass:

1. Title, line 8.

Following: the first comma

Insert: "13-27-104,"

2. Page 7.

Following: line 14

Insert: " Section 4. Section 13-27-104, HCA, is amended to read:

"13-27-104. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the second third Friday of the fourth month prior to the election at which they are to be voted upon by the people."

3. Renumber subsequent sections

4. Page 9.

Following: line 18

Insert: "(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state."

4. Page 9, line 25.

Strike: "4"

Insert: "3"

Signed: Eleanor Vaughn
Eleanor Vaughn, Chairman

JPL 1-22-91
Amd. Coord.

SR 1-29 1:30
Sec. of Senate

HEARING ON SB 156Presentation and Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, introduced SB 156 at the request of the secretary of state. This bill will clarify and generally revise initiative and referendum laws and bring uniformity to the process at the state and local level. As a result of what happened in 1990 during the last initiative and election season, the staffs of the secretary of state, the attorney general, legislative council and various election administrators (usually the clerks and recorders in the counties) met and discussed the problems in the initiative process that needed to be "ironed out." They wanted to make sure that everyone would know what the initiative process would be and remove any land mines that might trap the unwary. SB 156 is a result of their meeting. Sen. Doherty explained the bill as follows:

Sect. 1 will eliminate the general language that details how to conduct a local government initiative petition and replace that language with specific language dealing with the county initiative process. There would now be one process instead of two.

Sect. 2 deals with the petition for the initiative to change the local form of government. The transition provisions must explain how the changes would be made for an effective and smooth transition of local government if the initiative were adopted by the local government voters.

The changes in Sect. 3 would allow the election administrator to review the petition for form, and the county attorney would be required to review the legality of the petition. This is similar to what happens at the state level when the secretary of state reviews the form and the attorney general reviews the legality of the petition.

Sect. 4 should be read in conjunction with Sect. 6 as these two sections deal with the deadlines for submitting an initiative petition to the election administrators and the secretary of state. In the last election season when there were a number of different initiatives, everyone waited until the last day to submit their initiative petitions. This created an "incredible burden" on local county clerks and recorders as they must check the validity of the signed voter's signatures. More time is needed. Sect. 4 would move the deadline back four weeks to allow the county clerks and recorders sufficient time to check voter's signatures. This is an important change because an initiative that might have qualified for submission to the voters would not qualify if there were not the correct number of qualified signatures.

Sect. 5 deals with the problems of backers of different initiatives resubmitting their proposed language to the legislative council. This section clarifies that the legislative council is an advisory council and it would prohibit the secretary of state or attorney general from rejecting a petition solely on the basis that the language that was submitted in the initial draft to legislative council is different from the language which eventually comes out in the petition. This section would also allow the secretary of the state to conditionally approve a petition with the requirement that the technical errors be corrected prior to circulating the petition. The Senate added some language in subsection (6) that would require the secretary of state to give "boiler plate forms" to initiative petition backers. The technical language would be provided on the form to eliminate any misunderstanding.

Sect. 7 deals with the approval and rejection process of the secretary of state and the attorney general. The attorney general requested the law be changed regarding the language for the attorney general's appointment of a committee in order to prepare a statement to accompany an initiative petition. The Senate felt the attorney general should be required to seek out parties on both sides in order to obtain their advice. Sen. Lynch amended the bill on the Senate floor. The law initially read the attorney general may endeavor to seek out parties on both sides. It will now read shall endeavor.

Sect. 8 deals with the initiative argument committee formation. These are the committees that write the arguments on the two sides of the initiatives. The law currently requires the committees to be appointed within 30 days of the approval of the petition. In practice, it is hard to find the opponents to the initiative to form a committee within 30 days. This section would set a deadline date of six months prior to the election for the appointment of the committees. This would give the secretary of state's and the attorney general's offices more time to identify opponents.

Sect. 9 is repealed. It dealt with a unique procedure of abandoning a commissioner/manager form of government. This procedure would now be the same as for abandoning any form of government, adding uniformity to the law.

This is a good government bill. It will clean up the process and make it more uniform. It should help to prevent lawsuits.

Proponents' Testimony:

Nancy Harte, Bureau Chief, Elections and Legislative Bureau, Secretary of State's office, distributed an amendment EXHIBIT 1 and presented written testimony. EXHIBIT 2

Peter Funk, Assistant Attorney General, said the attorney general's office would be involved in two sections of the bill.

There are two changes in Sect. 5 that will involve the attorney general's review of initiative petitions. Both changes are designed to generally address the issue of changes that are made in the initiative process between the time it begins when the legislative council reviews the petition until it ends when the attorney general and secretary of state reviews them. He referred to Pg. 9, Ln. 24, through the top of Pg. 10. "That amendment deals with technical defects. . . . On Pg. 13, Ln. 9, there is a change in the time frame in which we must respond to the secretary of state if there is a technical defect in the initiative petition. The change from 10 to 21 days is to make it consistent with the 21-day time period which is found on Ln. 14."

Mark Mackin, Whitehall, presented written testimony. EXHIBIT 3

C. B. Pearson, Executive Director, Common Cause/Montana, said they support the bill but would like to make one point. On Pg. 10, they are losing one week for circulation of signatures. Initially there was a problem with this because they would lose two weeks -- the one week that is now in the bill is a compromise. "We are going to work and try and get back that week in the future by redesigning and reworking the review of signatures by the county clerks and recorders. . . . We are willing to compromise on this particular aspect (now)."

Opponents' Testimony: None

Questions From Committee Members:

REP. JIM SOUTHWORTH asked if the attorney general's office would be able to prepare a ballot issue in plain and easily understood language. Mr. Funk said, "We do our best." The for or against language on Pg. 13 is "one of the primary reasons that things do wind up, sometimes, in a fashion that makes it difficult to understand the point of some of the initiatives. We would be in favor of some enhanced flexibility in that area instead of having to simply be tied to labeling the actions as for or against."

REP. VICKI COCCHIARELLA asked Sen. Doherty to respond to the proposed amendments. SEN. DOHERTY said he would have to resist the proposed amendment on Pg. 9 that would delete the newly inserted language. The problem with that was the backers of the tobacco tax initiative submitted a number of items to the secretary of state's office. The opponents to the initiative, the tobacco industry, attempted in the last initiative process to make the legislative council's recommendations binding. The tobacco industry was going to file suit as they said the changes were very substantive as there were differences in the legislative council drafts; this was a "smoke screen," and this shouldn't be allowed. This language clarifies that. Regarding the question on subsection (4): He would resist that amendment as this makes one date instead of two dates. Twenty-eight days is currently in statute. There was confusion about rejection or acceptance. This will eliminate the confusion. Regarding the

question on Pg. 13 "including but not limited to," he deferred to Ms. Harte. Ms. Harte said her office did not resist the concept. "That is one of the complaints we hear most often. For example, when you involve repeal of legislation often you must vote 'yes' if you want to repeal something and a vote of 'yes' is against the concept; to vote 'no' is the other way around. The language that was proposed -- but not limited to -- raises the question in my mind as to how much latitude there would be in those statements. It is really clear right now that the statement will be a for or against. If it is not, will that mean we will have a number of different petitions with the question asked in a different way? That concerns me. In some other states, they pose the initiative proposal as a question and the person responds by 'yes' or 'no' if they are for or against the question. I understand the problem and don't know if that particular language will solve it. It may make things more complicated because you will have some initiatives that are for and against, and some that may be 'yes' or 'no' and some may be something else."

Closing by Sponsor:

SEN. DOHERTY thanked the Committee for the hearing and the questions. He suggested the Committee work with Mark Mackin and Nancy Harte on some language on Pg. 13. The bill will bring some uniformity and clarity to the process. Rep. Carolyn Squires will carry the bill in the House.

HEARING ON SB 241

Presentation and Opening Statement by Sponsor:

SEN. CHET BLAYLOCK, Senate District 43, Laurel and West Billings, introduced SB 241 to carry out by legislative law, that which he thinks, was meant and clearly stated in the Constitution of the state of Montana, to prevent any elected officer of the state to hold two offices simultaneously and draw compensation from them at the same time. He referred to Article 6, Sect. 5, of the Montana Constitution on compensation: "officers of the executive branch shall receive salaries provided by law. During his term, no elected officer of the executive branch shall hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term." This comes from the minutes of the Constitutional Convention (ConCon). Delegate Joyce, who was the head of the Judiciary Committee during the ConCon, was explaining the second paragraph which is the one we're now considering. The Committee said as follows: "It makes it clear an elected official cannot hold two public offices at the same time nor can he be on two government payrolls or receive compensation from the federal and state government for performing governmental duties." Delegate Kelleher: "Mr. Joyce, no elected officer may receive compensation for his services from any governmental agency? I'm just concerned with the National Guard officers. For instance,

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 3-08-91

NAME	PRESENT	ABSENT	EXCUSED
REP. JAN BROWN, CHAIR	✓		
REP. VICKI COCCHIARELLA, VICE-CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS	✓		
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		

EXHIBIT 1
DATE 3-8-91
~~HB~~ SB 156

PROPOSED AMENDMENT TO SENATE BILL 156
(third reading copy)

On page 10, line 15, after 4:

strike 3

insert 4

SECRETARY OF STATE

STATE OF MONTANA

EXHIBIT 2
DATE 3-8-91
HB 56156



Mike Cooney
Secretary of State

Montana State Capitol
Helena, MT 59620

TESTIMONY -- HOUSE STATE ADMINISTRATION COMMITTEE ON SENATE BILL 156, MARCH 8, 1991

Madame Chairwoman and members of the committee, for the record I am Nancy Harte, Bureau Chief of the Elections and Legislative Bureau in the Secretary of State's office.

I am testifying today in support of Senate Bill 156, which was drafted at the request of Secretary of State Mike Cooney.

Montana's initiative and referendum process is a popular one, but it is not without its flaws. Senate Bill 156 cures some of these flaws in both state and local initiative and referendum statutes.

Individually, these changes seem minor, and they do not require immediate action. But collectively, making these changes will solve problems that have the potential of boiling over and becoming embroiled in litigation. For those people fighting for or against a cause through the initiative process, the clarity and consistency in the application of the initiative election law becomes extremely important.

Each one of these proposed changes come as a result of an event that took place over the last year that caused confusion and could have resulted in a court case.

The initiative process is usually undertaken by average citizens, not professionals in the development of ballot issues. The law regulating the petition process ought to be clear enough for those average citizens to complete the petition process without jumping through bureaucratic hoops or doing fancy legal maneuvering.

Senate Bill 156 will, we think, assist in that effort. I ask you to support Senate Bill 156, and I will be happy to answer any questions you might have.

TESTIMONY ON SB 156

3/8/91

Mark Mackin
117 Yellowstone Rd.
Whitehall, MT 59759

I want to make 4 points on SB156:

1) Section 4 subsection 3 Referring to the new language, I don't believe this is a needed change. The Legislative Council has always been in an advisory role, taking a first look at an initiative. Sponsors are then free to do as they wish. This new language invites litigation and makes the process more rigid. I would like this language deleted.

The use of a triple negative here also obscures the meaning.

2) Section 4 subsection 4 the time for rejecting a petition is extended to 28 days from 14. I don't think this is needed and would like to retain the 14 day period. It is usually obvious on its face if an initiative is flawed as to form.

New subsection five is a good idea. Easier for all.

3)Section 5 subsection 1. We lose a week of signature gathering time to give the elections administrators more time to count signatures. They managed to get through it in 1990 but I'm sure it was a burden with lots of last-minute signatures to verify and count. We will work with the election administrators and secretary of states office to effect some improvements in the counting and verifying procedure itself. If those improvements can be made, we would like to have the week back and may ask for it next session.

The correction brought up by the Secretary of States office is OK.

4)Section 6 subsection 6 I request an amendment to this section:

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar, but not limited to, the following example:

For instance, the A.G. could use TO RETAIN or TO REPEAL instead of FOR REPEALING or AGAINST REPEALING.

political shot. The Governor came out with these amendments. We accepted all the other amendments and just rejected these two." He asked the Committee to reject the amendments.

REP. BECK also requested the Committee reject the amendments. "There are a bunch of Democrats from over there so we are going to have Republicans to balance that out. We are going to balance it out with gender balance. I don't think that there is anything to worry about."

REP. BARNHART said she thought the Site Selection Committee of the Women's Prison was an entirely different matter. The Committee for the Women's Prison was for studying a site.

REP. SIMPKINS said we're looking at something far more significant and with more impact than what we're talking about for the Women's Prison for the entire state of Montana. We're talking about coming up with an entirely new concept of providing state-wide health service for everybody in Montana -- to include long-term nursing home care that cannot be provided within local communities. We should do everything possible to ensure that we get representation throughout the state. The only way that you can get that in this particular case is to ensure that you limit local area representation. We're dealing with eastern Montana and every place else (within the state). The present concept of the hospital was designed as a local issue because people were sent there by the order of the court and for tuberculosis. Now we're talking about the concept of possibly setting up a county hospital type for the entire state of Montana because counties don't have county hospitals. This was the entire concept that was brought up -- that the state should determine to redirect its efforts to be involved in providing state health care. That will affect all of Montana. We should be sure we get representation throughout the entire state on that particular issue.

REP. SOUTHWORTH said if the amendments were to pass it would look to him that "we were trying to nail guys such as (Rep.) Menahan, the two (Rep. and Sen.) Becks. These people are aware of the problems over there. They are aware of the program. I don't even know if they are going to be on the committee. I don't think we should sit here and make sure that they don't get on the committee."

Vote: HB 966 SIMPKINS' AMENDMENTS DO PASS. Motion failed 8 to 10. EXHIBIT 15

Vote: HB 966 DO PASS AS AMENDED. Motion carried 14 to 5. EXHIBIT 16 and EXHIBIT 16A

EXECUTIVE ACTION ON SB 156

Motion: REP. SIMPKINS MOVED SB 156 BE CONCURRED IN.

Discussion:

CHAIR BROWN said that the Committee has already passed one amendment.

Ms. Heffelfinger distributed Rep. Simpkins' amendment. EXHIBIT 17

Motion: REP. SIMPKINS moved his amendment.

Discussion:

Ms. Heffelfinger explained the amendment saying that she had worked on the language of the amendment with Peter Funk at the attorney general's office. The amendment would read "that the marking of a ballot in a manner similar to, but not limited to, the following example. . . . It gives the example, but it gives some flexibility so you don't have to say for or against on a ballot initiative."

Vote: SB 156 REP. SIMPKINS' AMENDMENT DO PASS. The motion carried unanimously.

Motion/Vote: REP. SIMPKINS MOVED SB 156 BE CONCURRED IN AS AMENDED. The motion carried 17 - 2 with Reps. Bergsagel and Roger DeBruycker voting no. EXHIBIT 17A

CHAIR BROWN announced that the bill will be carried in the House by Rep. Squires.

EXECUTIVE ACTION ON SB 157

Motion: REP. COCCHIARELLA MOVED SB 157 BE CONCURRED IN and moved Rep. Squires' amendments.

Discussion:

Ms. Heffelfinger explained the amendments saying that Rep. Squires had requested the amendment after talking to the U.S. Department of Labor about their concern for the exemption for judges from unemployment insurance. A compromise could not be worked out where you could do that and not risk losing some funds from the federal government and their unemployment tax credits. The amendments change the title and removes exempting election judges from unemployment insurance coverage. This is also done in the bill by striking Sect. 25, Pg. 22. The only item in that section was to exempt election judges from unemployment insurance. EXHIBIT 18

Vote: SB 157 REP. SQUIRES' AMENDMENTS DO PASS. The motion carried unanimously.

HOUSE OF REPRESENTATIVES

STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 3/13/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JAN BROWN, CHAIR	✓		
REP. VICKI COCCHIARELLA, VICE-CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS	✓		
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		

HOUSE STANDING COMMITTEE REPORT

March 13, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 156 (third reading copy -- blue) be concurred in as amended .

Signed: Jan Brown
Jan Brown, Chairman

Carried by: Rep. Squires

And, that such amendments read:

1. Page 10, line 15.

Following: "4"

Strike: "3"

Insert: "4"

2. Page 13, line 2.

Following: "similar to"

Insert: "but not limited to"

EXHIBIT 17
DATE 3/13/91
~~HB~~ SB 156

Amendments to Senate Bill No. 156
Third Reading Copy

Requested by Representative Simpkins
For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
March 12, 1991

1. Page 13, line 2.
Following: "similar to"
Insert: "but not limited to"

Amendments to Senate Bill No. 156
Third Reading Copy

For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
March 12, 1991

1. Page 10, line 15.

Following: "4"

Strike: "3" 4

Insert: "4"

2. Page 13, line 2.

Following: "similar to"

Insert: "but not limited to"